



THE  
D E F E N C E  
OF  
VICE-ADMIRAL  
SIR HUGH PALLISER, Bart.  
AT  
THE COURT-MARTIAL LATELY  
HELD UPON HIM,  
WITH  
THE COURT'S SENTENCE.

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LONDON:  
PRINTED FOR T. CADELL IN THE STRAND.  
MDCCLXXIX.

1779



# C O N T E N T S.

	Page
I. Sir Hugh Pallifer's Address to the Court, when called upon for his Defence.	i
II. Sir Hugh Pallifer's Address to the Court, on the close of the Evidence.	57
III. The Court's Sentence.	69



THE HUGH PATTERSON  
ADDRESS to the COURT

NEW YORK, 1891

HIS EXCELLENCY

THE CHIEF JUSTICE

OF THE SUPREME COURT

OF THE STATE OF NEW YORK

IN SENATE

CHIEF JUSTICE

OF THE SUPREME COURT

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OF THE SUPREME COURT

OF THE STATE OF NEW YORK

IN SENATE

SIR HUGH PALLISER'S  
ADDRESS to the COURT,  
WHEN CALLED UPON FOR  
H I S D E F E N C E.

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MR. PRESIDENT,  
and  
GENTLEMEN of the COURT,

**B**EFORE I enter into the formal vindication of my conduct, I intreat the indulgence of the Court, whilst I speak a few words concerning the peculiar circumstances, under which I appear before them. —There is some consolation in lamenting my misfortunes in the presence of persons with generous minds; men, whose honourable feelings will not deny the tribute of commiseration to the unfortunate.

I may truly call myself unfortunate in the severest sense of the word; for *all those sufferings, which now afflict me, have been brought on, by the pursuit of a can-*

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*did and fair bearing, to defend my character, against the unprovoked attacks of the most inveterate and unrelenting enemies.*

Four-and-forty years I have now had the honour to serve my king and country in the navy; during which long time I have not been without my share of the hardships, the dangers, and the distressful incidents so common to men of our profession. From the commencement of this long service, it has ever been my first ambition to deserve the favourable opinion of my countrymen, by the most industrious exertion of my faculties in every way proper for a naval officer; having neglected no opportunity of meeting the public enemy, or of performing any other duty to which I was competent.

It has been my good-fortune to have had my labours in the service rewarded by my sovereign with honourable and profitable offices; and also, till the occasion of the present trial, uniformly to meet with the approbation of my superiors in command. But I have ever valued my honour and character as an officer and a man at a higher rate, than the emoluments of the most beneficial employments; and it has ever been my principle to be ready to make a sacrifice of the latter, rather than tamely submit to the assassination of the former.

When it was thought expedient to arm our fleets against France, though already possessed of offices  
 4 which

which supplied an ample income ; and though for thirty years of my life afflicted with a painful bodily infirmity, from an accident in the course of service, and therefore more exposed to danger from the fatigues of a sea-command ; yet, warmed by a zeal to serve my country once more in the walk of my profession, I was happy to be honoured with the third post in the fleet under the command of Admiral Keppel.

An engagement soon ensued, and for my share in it the Admiral publicly and repeatedly testified his approbation of my conduct. But the action not being followed with that splendid and complete victory our countrymen expected, some of the friends and dependents of the Admiral thought fit to cast injurious reflections both on me and my division, though much the greatest share of the engagement had fallen to our lot ; and it was endeavoured, by letters in the public prints, and otherwise, to impress the world with an idea, that my misconduct more particularly was the cause of not having come to a second and more decisive engagement.

I appealed to my Commander in Chief for justice to my character ; but I found him averse to giving the proper check and contradiction to the reports, by which my honour was wounded ; and, notwithstanding his having at first *publicly approved* of my conduct, I had too good grounds to suspect, that *privately he*



*did not discourage* a very opposite representation of me.

Inflamed with resentment by the attacks on my character as an officer, and by the refusal of the Commander in Chief *either to accuse or exculpate me*, I pursued measures with a view chiefly to my own justification; which have brought upon me the rage of a violent party; and the *most unexampled irregularities* have been practised, to effect my ruin and destruction, as well as *through the pretence of my name to disturb the public tranquility*.

To check these proceedings, I anticipated the wishes of my enemies, by making an immediate surrender of several valuable offices, to the amount of between two and three thousand pounds a year; leaving myself with no other mark of distinction, than my *military rank, which I retained with a view only to have the benefit of a trial*.

But my enemies prescribe no bounds to their rage and malice.—Before my trial was ordered, every species of *threat* was applied to deter me from appealing to a Court-martial for clearing my honour; and since it has been known, every *art*, which the industry of *an host of powerful enemies* can supply, has been practised to *disappoint me of a fair hearing*.—All accuse *secretly*; but *not one* of the whole list chooses to come forth in a manly way to *avow his accusation*.—By this ungenerous manner of proceeding, I am exposed

exposed to the most extraordinary disadvantages.—My real *accusers* become *witnesses*.—No specific charge is made; in consequence of which, I scarce know how to shape my defence.—*Every witness* claims the right of attacking me as an *accuser*; so that since the first day of the trial, *new accusations have been daily springing up*.—If the accusation fails of success, blame belongs to nobody.—If it succeeds, each will claim a share in the merit of making it.—But even all this is not enough to gratify their resentment. Since my trial has been ordered, they have attempted to deter me from it, by conspiring to address his Majesty to degrade me from my rank; and I have too much reason to believe, that two of the Admirals, and most of the Captains examined against me, have been so regardless of even the semblance of decency as to sign it; though even when they knew, that they were to be called upon as witnesses.—Nay, since the trial has been going on, daily attempts have been made in the public papers to *alarm my judges*; as if *themselves would not be safe from attack, for doing me justice*.

With all this weight of party and prejudice co-operating against me, my enemies may have flattered themselves, with the hopes of disarming me of the fortitude requisite to sustain me in so oppressive and trying a situation. But, feeling a consciousness of my innocence, and encouraged by confidence in your

firm impartiality, unequal and severe as the conflict is, I look to the issue of it without dread or apprehension.

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THE general subject of the present trial is my conduct, as commander in the third post of the British fleet under Admiral Keppel, on the 27th and 28th of July last; more especially my conduct subsequent to the action with the French fleet on the former of those days.

The first thing insinuated against me is, that, at five in the morning of the 27th, my ship was considerably to leeward of her proper station. I collect this charge from the manner in which Admiral Keppel, on his trial, explained the object of the signal for six or seven of the ships of my division to chase to windward; for, as he represents, this signal was to close the interval between the Victory and me, *occasioned by my being far to leeward*; and Admiral Campbell, who *now appears to have made this signal, so important in its consequences, without previously consulting the Commander in Chief*, justifies it under the same idea.

Whether those gentlemen mean absolutely to impute any fault to me in this respect, is not quite clear from their words. But, as they may bear such a construction,

struction, it is not fit, that I should suffer them to pass unnoticed.

My answer is, that, at the time stated, the *Formidable* was upon the *Victory's* lee-bow; and that this was the position, in which the Admiral's last signal for the fleet's tacking all together, which was in the morning of the preceding day, had placed me; and that he suffered me to continue in it, without making any signal to alter my position; which implies, that he did not disapprove of it. As to the evidence of Admiral Campbell on this head, he placing me before the *Victory's* beam, it will be found contradicted, not only by my officers, but by Admiral Keppel's *own journal*, which expressly describes me on the 27th to have been on his *lee-bow* at day-light. The words of the journal are, *at day-light saw the French fleet to windward, the Vice-Admiral of the Red and his division well on the weather-beam, the Vice of the Blue on the lee-bow*. Therefore it seems most probable, that Mr. Campbell, perhaps not a little solicitous to justify his own signal, I will not say influenced by a desire to strain every thing into a crimination of me, is inaccurate in the recollection of my position. But be this as it may; and though it should be admitted, that Rear-Admiral Campbell is right in supposing me to have got more to leeward in the morning of the 27th than I was the night before; yet I trust, that this will be no cause of



censure of me, unless it shall appear, which I think impossible, that my being too far to leeward was owing to some negligence or inattention on my part. Sure I am, that I was ever studious to keep my ship, where I thought the Admiral's motions required her to be; nor have I the least reason to suppose, that my officers were wanting in exertions to second my endeavours, and obey my orders for this purpose.

As to my conduct in the engagement itself, it was so unexceptionable, that the most bitter of my enemies do not complain of it. Consequently, to enter into a very formal justification of this part of my conduct would be giving unnecessary trouble. However, I doubt not but that the Court will be attentive to the share I had in the engagement; as well because the proper discharge of my duty, whilst the action lasted, may entitle me to strong presumptions in my favour, as because it will account for the extraordinary damages to my ship, which materially relate to the defence of my subsequent conduct.

With a view to this, I beg to be indulged with a few words relative to the time of action itself.

I went into action under very singular disadvantages; for, whatever might be the intention of the signal for most of the ships of my division to chase to windward, the effect produced was separating so many of my division from me, and from each other,  
that,

that, during the time of action, I had not one ship near enough to support me. Both the other flag officers were supported in the action by all the ships of their respective divisions; and the Admiral's own division was further aided by the junction of several ships of mine. But the signal for chasing left me with only two ships in any degree near me; and these, by the chasm from the want of my other ships, were at too great a distance, to take off any of the enemy's fire, the nearest ship a-head of me, being half a mile from me, and the nearest astern, a mile; except for a few minutes at the latter end of the action, when one of the ships astern of me shot close up to leeward of me. Before I began firing on the enemy, I *backed my mizen-top-sail, and it was kept so the whole time I was passing the French line*; which, by *retarding my progress*, enabled me to give the French *more of my fire*, and consequently was the cause of my receiving *more from them*. The first ship I became close engaged with, was the first or second ship a-head of the French Admiral; after which I successively passed the remainder of the French center, and the whole of their rear; and that no ships might escape my fire, I *hauled my wind, to close with the two sternmost ships of the enemy*, which appeared to have kept more to windward than the other ships I passed, and not to have been engaged before,

before. On the whole, I believe, that the Formidable fought seven or eight ships more than fell to the share of Admiral Keppel, whose log takes notice of engaging only six ships of the enemy, besides the French Admiral, and is therein confirmed by the evidence of Mr. More at the late trial, he speaking to only seven or eight ships.

These particulars of my conduct in the engagement, I should be above relating, if it was not necessary to account for the extraordinary damages to my ship; and if some of the witnesses against me, when they were examined to this point, had not spoken of me in such *cold* and *indifferent* language, as strongly marked their anxiety to prevent any favourable impressions of me on the minds of the court; lest my proper behaviour, in the critical moment of action, should induce a favourable construction of my subsequent conduct. It is very true, as Admiral Keppel expresses it, that I only performed my duty like other officers. But the question, which came from the court, did not lead to so *invidious* and *offensive* a comparison as the answer points at; nor can I imagine, why it was answered in that way, except from ill-will towards me. If any comparison was proper, it should have been, not of the conduct of one officer with another, but of the share which they respectively had in the action, from the different situation of their ships. It might be, and so the fact was,

was, that it was my fortune, and that of the ships of my division, to have more of the action than the ships of the two other divisions. Yet it would be a great injustice to suppose, that the captains of the other divisions, if they had been engaged on the same terms, would not have acquitted themselves with equal zeal.

On coming out of the action, the first moment I was clear of the smoke, I anxiously looked for the Admiral, being ever solicitous to second what appeared to me to be his design. At this time he had wore, and I saw him at some distance, with the ships of his own division about him, and some of mine, which had joined him in the beginning of the engagement. He was standing towards the enemy, and had the signal for battle still flying. The red division was then to windward of the rear of the enemy. Hence *I took for granted, that the Admiral intended to renew the engagement immediately*; and, rejoicing at the idea, *I did not one moment hesitate to endeavour taking the lead in what then appeared to me so glorious a design*. Therefore, though my ship was the last, or last but one, which came out of action, and had apparently suffered very much in her sails and rigging, and in loss of men, yet *I instantly ordered the ship to be wore, and to stand towards the enemy, who was still within gunshot of us, without waiting to examine into the state of our damages*. I also directed the officers  
and



and men to return to their quarters. My orders were executed instantly; and, by the use of temporary ropes to brace the yards about, the ship was wore. Admiral Keppel and the Officers of the *Victory* say, that they were *quite ignorant of this movement of the Formidable*. But to others it was *very apparent*, particularly to Captain Marshal, and the Captain of the *Worcester*. How so material a motion of the Commander in the third post escaped the notice of those on board the Commander in Chief, I know not. But, whatever the cause may have been, I feel this as *one of the many instances*, in which it was my ill-fortune not to be an object of their attention under any circumstances, which place my conduct in an *advantageous* point of view.

Some time after thus wearing and standing towards the enemy, I perceived, that the Admiral had hauled down the signal for battle, and shortened-sail; and that the same was done by the Vice-Admiral of the Red. This led me to imagine that the Admiral had given up all thoughts of immediately renewing the action; and I was not mistaken, for the Admiral confesses and justifies it. At the same time seeing the whole French fleet wear to come on the starboard tack, and that three of them stood directly towards the *Formidable*, I directed her to be wore a second time, and advanced to join the Admiral. This step appeared to me necessary to prevent the danger of  
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being cut off; and it was a further inducement to me, that I then did not see any thing to warrant my keeping so near to the enemy, and at such a distance from the Admiral and the body of the fleet, as I was then alone.

At this period arises the second article of charge against me, for the origin of which I am also indebted to Rear-Admiral Campbell; for it was he who first said, that, as the signal for the line at a cable's length asunder was then flying on board the Victory, and she was on the larboard tack, I ought to have continued on the same tack, and also ahead of the Admiral, that being my station in the line on the larboard tack.

But the fact is, that we on board the Formidable did not see the signal for the line till we came abreast of the Victory. That signal being at the mizen peak, and the Victory standing end-on towards the Formidable, it was impossible that we should see it sooner. It was also invisible to us on board the Arethusa, the repeating frigate; for she had been called in from proceeding to her station, and kept near to the Victory, Captain Marshal being actually on board her. This brought both ships into the same position in respect to the Formidable, and rendered it equally impossible to see the signal on board of either. I believe that I am quite accurate in stating the position of the Victory and Arethusa, at the time

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I am speaking of, that is, from the second time of the Formidable's wearing till she passed the Victory. Captain Marshal, having been first called by signal, and then hailed, had been an hour on board the Victory; *a very extraordinary circumstance*, as it appears, that *there were no orders for him, and his being with the repeating frigate out of her usual station, during so critical a time*, deprived me, and probably some others, of the full opportunity of seeing the signal for the line. At all events, I am certain, that in point of fact I never saw the signal for the line till we were abreast of the Victory, though I continually directed my attention to her; nor was it seen by any of my officers. This will appear the less extraordinary, when it is considered, that Sir Robert Harland never saw it, whilst on the larboard tack; though his situation on the Victory's weather-bow rendered it indisputably more probable, that he should see it, than that I should, when right a-head of the Admiral. Captain Laforey also acknowledges, that he did not see the signal for the line, whilst he was on the starboard-tack, and the Victory on the larboard, till he passed the Victory. It is material to observe, that whilst I was standing towards the Victory, no ships were formed in a line ahead or astern of the Admiral; nor was there any other indication of the signal for the line being flying; for it had not been enforced, either by the signal for seeing particular ships  
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out of their stations, or by the signal for particular ships to make more sail; both which signals, being at the maintopmasthead, might have been seen by us, though the signal for the line was invisible. But if I had seen the signal for the line, my wearing and approaching towards the Victory on a contrary tack would have been justifiable; because, as I have already explained, the signal for battle was hauled down, and the Victory, with the Vice-admiral of the Red and his ships, had shortened sail; and at the same time, I saw the French fleet wearing to come on the starboard tack, and three of their ships pointing towards me. Under these circumstances, it appeared to me, that, if I had not wore again, and stood to join the Victory and the rest of our fleet, the three ships of the enemy, which pointed to me, would have had it in their power, to have separated me from the rest of our fleet. My danger at this time is apparent, even from the evidence of Admiral Keppel himself. About the time of my wearing, he made the signal to wear; and though he was considerably more distant from the enemy, than the Formidable was when she wore, he says, that *he should not have deserved the name of an officer, if he had not wore*; founding himself on the circumstances of the enemy's forming their line upon the starboard tack, and his line's not being formed. This was only a little before the time, when Sir Robert Harland



land at a former trial described Admiral Keppel to be in so much danger, that, seeing him, as Sir Robert said, unsupported, and within the power of the whole French force then astern of him, he was coming down to support the Admiral, without waiting for orders. If then it would have been so dangerous for the Victory to have continued on the larboard tack, what must have been the consequence, if my ship, *alone*, and *so much nearer to the enemy*, had remained there? But notwithstanding all these circumstances to justify me for wearing the second time, and advancing to join the Victory, the Admiral, in his evidence, could not help betraying his inclination to blame me; and Rear Admiral Campbell, *ever industrious to attack me*, goes a step further, precipitately and decidedly imputing to me a positive disobedience to a signal, which I neither did nor could see. This is the more observable; because Admiral Keppel acknowledges, that *when I passed the Victory, there was no other ship with her, notwithstanding the signal for the line*, and that mine was the last ship which passed him; and further, that he then saw no possibility of forming the line on the larboard tack, and had therefore made the signal to wear, which the Formidable had already executed. *Yet he approved of all the other ships which passed him, but blames me.* How is this partiality to be accounted for, otherwise, than by sup-  
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posing both Admiral Keppel, and Rear Admiral Campbell, to be influenced in their representations of my conduct by ill-will towards me?

One other observation only seems necessary on this head, which is, that the Admiral himself confesses, that *my wearing the second time, coming on the star-board tack, and joining him, did not prevent his renewing the engagement, or produce any other ill effect,* and was so far from interfering with his views at the time, that I was only doing that which he was on the point of doing.

A little before three o'clock, the Formidable passed to leeward of the Victory; and in passing the signal for wearing *first* opened upon us, and then the signal for the line. The latter was soon after repeated by me, notwithstanding the doubts, which may have arisen from its not having been observed by several of the witnesses examined against me. The fact of my repeating it is not only mentioned in the Formidable's log-book, but will be proved by the officers of the ship, particularly the Midshipman, whom I appointed to repeat signals, and by other witnesses. It will also be further proved, by a very remarkable piece of evidence, which probably never would have occurred to me, if a member of this Court had not asked one of the witnesses, whether a gun was not fired, as it ought to be, when the signal was repeated. This question led me to call for the gunner's expence-

book of the Formidable, where, to my great satisfaction, I found a most corroborating evidence of our repeating the signal for the line; namely, an express charge of the expence of powder for the gun fired on the occasion, which appears to be the last gun fired from my ship on the day of action. The gunner's expence-book I shall have produced, for the inspection of the Court; and I hope, that this, with the other evidence, will remove all doubts about a fact, which some of the witnesses against me have *so positively* denied. I shall also prove, that the signal for the line was kept flying till it was dark; except for a short interval, during which, it was shifted to make the signal, for ships to windward to bear down into the Admiral's wake, the first time of hoisting, more conspicuous, in the same manner as was done on board the Victory. As to the signal for wearing, it was not repeated by me; because, being already on the starboard tack, as that signal required, I deemed the repetition improper. Rear-Admiral Campbell, on the trial of Admiral Keppel, spoke as in doubt, whether the signal for wearing was made till after I had passed the Victory, saying, that the Victory did not wear till a quarter of an hour after passing on the larboard tack and to windward of the Formidable, which, to the best of my recollection, is allowing much too long a time; for  
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It appeared to us on board the Formidable, that the Victory wore almost immediately after passing to windward of us. But the purser of the Arethusa, who took the written minutes of signals on board the repeating frigate, makes this signal for wearing to the starboard tack to have been up half an hour; as by his account it was hoisted at half an hour after two; and Captain Marshal and the mate of the Arethusa agree with him that it was not hauled down till three. Consequently it was up a quarter of an hour before I passed to leeward of the Victory, even though Admiral Campbell should be correct in supposing, that it was so long as a quarter of an hour after the Victory's passing us on the larboard tack, before she wore.

Within a few minutes, or to adopt Admiral Campbell's reckoning, a quarter of an hour, after the Formidable's passing the Victory, whilst the latter was on the larboard-tack, she wore and repassed to leeward of the Formidable, and very near her.

Here it is proper to take notice of a *very strong charge of disobedience to signals*, which my enemies have repeatedly urged against me, with the utmost confidence, and which has been the *great cause, both of the late trial, and all my present sufferings*. The charge, as first stated in the public prints, was, that *the cause of Admiral Keppel's not re-attacking the French at half past three in the afternoon was my not joining*



him, but being at that time FOUR MILES TO WINDWARD with my division. Admiral Keppel, speaking in parliament a little time before the charge which produced the late trial, though he then seemed to disclaim the imputation of any wilful disobedience on my part, pointed at the same thing; for he asserted, that *the signal for coming into his wake was flying from three o'clock to eight in the evening, unobeyed*. In his defence on the late trial, the Admiral pursues the same idea; for he asserts, that the blue flag, for ships to windward to come into his wake, was hoisted the first time; because *I continued to lie to windward; and by so doing, kept my division from joining him*. I am now citing *the Admiral's own words*, when on his defence; and in the evidence he has given against me on oath, he expressed himself to the *same effect*; when he explained to the Court the occasion of first hoisting the blue flag. But the charge, thus boldly asserted, *supposes facts, which never existed*. According to Captain Marshal, his purser, and the mate of the *Arethusa*, all speaking from the written minutes of signals taken at the time, the blue flag, for ships to windward to come into the Admiral's wake, was *first* made at *twenty-four minutes after three*, and it was *hauled down a few minutes after*; the two former witnesses mentioning thirty minutes after three, and the latter twenty-seven minutes: and *all three agree, that it was not made again till thirteen minutes after five*.

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It is also proved by the minutes of the purser, who was the person appointed by Captain Marshal for the purpose, that the signal, for wearing the second time, and coming to the starboard-tack, was made at *thirty minutes after two*, and hauled down at *three*; which shews, that, at this latter time, the Victory was in the act of wearing; after which she passed the Formidable to leeward, so near as to be almost within hail, and went ahead of her, and then edged away, leaving the Formidable in her wake. *Within so short a time as the twenty-four minutes, from the Victory's wearing, to the hoisting of the blue flag on board the Arethusa*, it was absolutely impossible, that the Victory could have wore, passed the Formidable, and got so far ahead of her, but what *I must have been much nearer to the Victory than the mile prescribed to me, by my station in the line*; and as by the Victory's edging away I was left in her wake, *the blue flag could in no sense be applicable to me: nor was it applicable to the ships in general of my division*; for all of them, except the Defiance, which had joined the Red Division, and the America, which was far ahead, were a long way to leeward of the Admiral, *when the blue flag was first hoisted*, as will appear from examining the evidence of the several Captains of my division, at the late trial. It also appears by the same testimony, and the Admiral's own account of the ships when he made the signal to wear to the starboard tack, that *no ship*

was near me but the *Victory* herself; so that, though I had been to windward, I could not be said to have kept the ships of my division with me. So far I justify myself on the supposition, that the Admiral might possibly have got to leeward of me, a little before the first time of making the signal for ships to windward to bear down; and if there was nothing more, I should stand fully exculpated from being the cause of that signal. But an additional fact is come out on the present trial, from a witness examined against me, which removes even the possibility of my being the object of the blue flag, the first time of hoisting it. Mr. Graham, who took the minutes on board the *Arethusa*, has informed the Court, that the blue flag, though not repeated on board the repeating frigate till twenty-four minutes after three, was hoisted on board the *Victory* at fifty-six minutes past two; Captain Marshal not chusing to repeat it, till the signal for the line was hauled down on board the *Victory*, to shew it plainer. Compare this with the time of hoisting the signal to wear to the starboard tack, which was at thirty minutes after two, and the time of the *Victory*'s actually wearing, which, from the written minutes taken on board the *Arethusa*, appears to have been at three, and the unavoidable result must be, that the blue flag, for ships to windward to bear down, was first made, WHEN THE FORMIDABLE WAS ACTUALLY TO LEEWARD OF THE VICTORY.

What

What then becomes of the Admiral's confident assertion, that my *still continuing to windward* was the cause of this signal? I beg the Court's particular attention to this exposition of the *numerous untruths and misrepresentations*, which have been applied, to make the situation of my ship the cause of first hoisting the signal for ships to windward to bear down. I was represented to have been to *windward* of the Victory, when I was actually to *leeward* of her. If I had not been to leeward, *the time would have placed me in the Admiral's wake, within the distance of my station in the line*; whereas the charge supposes me to have been *so far and so long out of his wake*, as to require an enforcing signal. I am represented to have *continued to windward*, before the signal was made, which implies, that I had been so for some considerable time. But if I had really been to windward, the twenty-four minutes between the Victory's second wearing, and the first time of the Arethusa's repeating the signal for ships to windward to bear down, would barely have allowed time for the Victory's passing to leeward of the Formidable. My division is represented to have been to windward of the Admiral, when only one of them was so. They are said to have been kept near me, when they were at a distance from me, and actually to leeward of the Admiral, and when the only ship near me was the Victory herself. *The signal for coming into*

*the Admiral's wake was alleged to be flying from three o'clock in the afternoon till eight o'clock at night, unobeyed by me. But the fact turns out to be, that it was never flying from twenty-seven or thirty minutes after three, to thirteen minutes after six; and it is as certain, that it was not applicable to me at the soonest, till this latter time.*

But if neither I nor my division were objects of the blue flag the first time it was hoisted, it may be asked, to what ships it could be applied; and this I think myself able to explain to the court, though in strictness my justification requires no more, than proving myself not within the meaning of that signal. The Court will please to recollect, that the blue flag was first hoisted at fifty-six minutes after two at the mizen peak, with the signal for the line; and that the Proserpine's signal was made at three o'clock, to carry a message to Sir Robert Harland then to windward, to form in the rear of the Admiral, instead of going ahead, which was the proper station of the Red division on the starboard tack; and further, that the signal for the line was hauled down at twenty-three minutes past three, to make the blue flag the plainer. It is therefore extremely probable, that the blue flag was first intended for Sir Robert Harland's division to bear down. But lest the signal for the line, the most commanding of all signals, should be understood to controul the blue flag, and so prevent Sir Robert from

from obeying it, I conclude, that Captain Sutton was sent with the message for Sir Robert's forming in the rear; and as he was some time in going, and the Admiral was apprehensive perhaps of an attack on himself and the crippled ships to leeward of him, it is probable, that the original signal for the line was hauled down to prevent any misconception of the blue flag, and so to expedite the purpose of the message. If the blue flag was not intended for Sir Robert Harland's ships to windward, I can no otherwise apply it, than by supposing it made for some ships of the center division, which might be then to windward, instead of being in their stations astern of the Admiral.

After the two ships had passed each other, the Formidable remained for some time, within the length of her station in the line; she being the ninth ship from the Victory, and consequently nine cables lengths, or rather more than a mile from her. But, as the Admiral carried *more sail* than the Formidable in the disabled state of her sails and rigging could make, the former was gradually and constantly increasing her distance from the latter till night. The particular time when the Formidable was first left beyond the prescribed distance of her station in the line it is impossible to fix. But whatever the time was, whether an hour or more after being passed by the Victory on the starboard tack, it is the period, from which I am to account for not preserving my station.

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To find out whether I used my utmost endeavours to preserve it, there are two things to be considered; first, *whether I steered the course proper for getting up to my station again*; and secondly, *whether I carried all the sail in my power*. If my being out of my station in the line was owing to any failure on my part, it must have been in one or both of these points; and therefore they are the true and proper test of my conduct.

When the Admiral had passed to leeward of us, he edged away, which placed us in his wake, and we continued to steer after him, till the Red division passed under our stern to form in the rear, when we hauled a little to windward out of their way. This, at the same time that it served to give room to the Red division to form, prevented us from being interrupted in refitting our rigging, without producing any inconvenience to us, as it was impossible in our then state to have kept our station between any two ships in a line. But as soon as we had got clear of the Red division, my attention was to keep the Admiral a little open under our lee-bow, which was keeping the command of the wind, for taking our station when we got up the length of it, and were capable of managing our ship in the line. This has been already proved to the Court by the Captain and the Master of the Formidable, who have mentioned the directions I gave on the occasion, and that they  
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were complied with as exactly as was possible, and that we constantly kept the course I have described. I shall also trouble the Court with further examinations on the same head.

That we carried all the sail in our power will be fully explained to the Court, when I examine my officers to prove, how greatly the Formidable had suffered in her sails and rigging. One of the principal impediments to our keeping up with the Admiral, was *our inability to bend our foretop-sail till between seven and eight in the evening*; the reason of which was stated to the Court, both by Captain Bazeley, and the Master of the Formidable; and if it shall be necessary, it may be further enquired into, when I call them and my other officers.

In the course of the evidence against me, it has been attempted to impress the Court with an idea, that the Formidable was damaged in sails and rigging little more than the ships in general, and not more than the Victory. But the Court will consider and decide on the truth of this insinuation, when all the particulars of our damages are related by my witnesses. In the mean time, it may not be improper to remind the Court, how very improbable it is, from a comparison of our much greater loss in killed and wounded, than the rest of our fleet experienced, that we should not have suffered more in other respects. It fell to the lot of my division to have the greatest  
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share of the action, in consequence of which *we had more killed and wounded than Admiral Keppel's and Sir Robert Harland's divisions together; and the Formidable had not only more killed and many more wounded than any other ship, but EVEN HAD SINGLY, WITHIN TWO, AS MANY KILLED AND WOUNDED, AS ALL THE TEN SHIPS OF SIR ROBERT HARLAND'S DIVISION COLLECTIVELY.*

My enemies have laid much stress on its being so long before the Formidable was refitted, as if we had been tardy and dilatory. But I am confident, that the testimony of my officers, when they are examined, will evince the contrary; and that every possible effort was made to repair our damages in the shortest time. If the time, for which we were so employed, should appear long, the Court will please to consider the many circumstances which concurred against us. The Formidable, I may safely say, had suffered in the action more than any other ship; and as we came last out of action, we consequently began to repair later. The time was still further protracted by our wearing immediately to stand towards the enemy again, and continuing to keep the men at quarters in expectation of an immediate renewal of the action; so that we did not begin to refit, till we came again to the starboard tack, and joined the Admiral. We were also under other singular disadvantages, which retarded our refitting, when it did commence.—

thence.—The *boatswain* was killed in the action, which must be allowed to be a capital loss on such an occasion, in the repair of sails and rigging, those being in his particular department. I was *deprived of all use of three of my lieutenants*; for one was wounded in the action, and two were so extremely ill, that, notwithstanding the greatest anxiety to be upon duty during the action, they were absolutely incapable of coming upon deck. It unfortunately happened too, that there was not one person on board the *Formidable*, either officer or seaman, who was in her, when she was fitted out, or knew how the boatswain's stores were stowed. Having all these difficulties to struggle with, we could not have refitted the ship so soon as we effected, if I and my officers, with the men, had not all submitted to the most fatiguing exertions, without the least remission till late at night; nor could the business of the repairs have been properly directed, if, by my desire, Captain Bazeley had not, after the action, left the quarter deck, to attend on the fore-castle, where our principal damage was received, and by his personal activity and superintendence there, endeavoured, as far as was possible, to prevent the inconveniencies from the loss of the three lieutenants and the boatswain.

Some have attempted to make use of the circumstance of the *Formidable's* wearing twice, and sheering out of the way of other ships to my disadvantage;

tage; and to persuade the world from her being so far *manageable in this respect*, that she was *manageable for every other purpose*; and therefore, that this was a proof of her not being so disabled in her sails and rigging, as I represent. But I appeal to the experience of sea-officers, whether a ship, with any sail set, in moderate weather, will not easily wear, or when going large, as easily sheer out of the way of other ships, *though not able to keep way with another ship carrying more sail than she is capable of setting*, which was the case of the Formidable with respect to the Victory.

Another adverse attempt has been to shew the position of the Formidable, when she became to windward of the Admiral, to have been such, that by bearing away, she might at any time have fetched into her station. One or two of the officers of the Victory have accordingly placed me in or near the wind's eye of my station, saying, that they saw me almost on the Victory's beam. But none of them pretend to have set the Formidable by compass; and they have been most positively contradicted by Captain Bazeley, and the Master of the Formidable; both of whom have testified, that she was left by the Victory at the distance of three miles, and about three points on the Victory's quarter, and one mile to windward of her wake, which, together, throws me a mile and a half astern of my proper station in

the Admiral's wake. They will be confirmed in this by my other officers, and are more likely to be accurate in their observation; because it was their business to regulate the motions of my ship by those of the Victory, and they had my orders to keep the latter a little open on the former's lee-bow; whereas those, from whom they differ so widely, had no particular reason to be nicely attentive to the relative position of the two ships. Captain Marshal also, who appears to have been generally very accurate in his observations, corroborates the position of the Formidable, as described by my officers, where he explains the relative situation of his own ship, in respect to the Victory and Formidable, when the Fox was sent with the message to me. But what still further exposes the extravagance of placing me in the wind's eye of my station, is, its being contradicted by Admiral Keppel and Rear Admiral Campbell. The former is very vague in describing my position. But as nearly as I can understand him, his remark from the couch does not tend to make me more than four points on the Victory's weather-quarter; which, in effect, agrees with Mr. Campbell's account. Such being their idea of my position, it differs *only one point from the account of my officers*; for the latter place me three points on the Victory's weather-quarter, and it imports little to my defence, which are most correct, when it is considered, that whether I was three or four points on the Victory's weather-



weather-quarter, I was, in either case, far astern of my station in the Admiral's wake, and consequently, could not fetch up to it, except the Victory had shortened sail, or till I was able to set more sail than the Victory. It will scarce be objected, that I should have bore down into the Admiral's wake before I had got up to the length of my station. But lest it should, I submit to the Court, that, as the Admiral did not bring to, but was constantly encreasing his distance, it was officer and seamen-like to keep to windward of my station, till I could get near the length of it, and was able to preserve it when recovered. The course I steered to reach the length of my station, if it could have been effected, would have brought me within half a mile to windward of it; and bearing down into the Admiral's wake sooner, would have been both an interruption to the ships already formed, and acting contrary to the signal for the line then flying, which, being more commanding than the other, controuled it.

I have been so long in vindicating myself, against the charge of disobedience, imputed to me, for not being able to keep my station according to the signal for the line, that I am very unwilling to trouble the Court with any other remarks on this part of my case. But the unrelenting invention and ingenuity of my enemies compel me to request a little further indulgence on the same point. From the purport of  
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some parts of the evidence, I can plainly see, that it is intended to lead the Court to consider me as the cause of increasing my distance from the Victory.

One mode, of encouraging such a supposition, is, that we continually kept close to the wind, whilst the Victory was going large. But the real fact is far otherwise. The course of the Formidable was South the whole afternoon, which was a point or two from the wind. Our log so states the course; and it will be corroborated by the testimony of my officers. The Victory's log *falsely represents her to have laid to from one to four o'clock; and this falsehood was acknowledged by her Master on the late trial.* But during the rest of the afternoon, her log describes her to have steered South, two points from the wind, till seven in the evening, when she is made to go South South East two miles, and afterwards to haul close to the wind. This shews, that we steered the same course as the Admiral, and so furnishes an answer to the vague and contradictory account of our always hugging our wind. The truth is, that we never kept close to the wind, but always steered with the Admiral in the same direction; a little under our lee, which led us after him on the same course with him, and without altering our position from him, except by an increase of distance; and even, if we had been inclined to hug the wind, as is suggested, the bad state of our braces and bowlines would not have allowed it. The

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neareff, we kept to it, was a short time after the Admiral's passing us to leeward, which was done, as I have mentioned before, that the Red Division, when they passed under our stern to occupy the rear, might have room to effectuate their movement, without any interruption from the Formidable.

Another objection, aiming at the same conclusion, is deduced from a comparison of the Victory's log with the Formidable's, as to the rate of sailing. The rate marked in the Formidable's log, from four in the afternoon, is, for the first hour, two knots two fathoms; from five to six, three knots; and from six to seven, three knots four fathoms. The Victory's log for the same hours is uniformly two knots each hour. From this difference the argument attempted is, that my ship out-sailed the Admiral's; and therefore that it was my fault, if I did not keep up to the length of my station. On the supposition, that the two logs were accurately marked, and that there was no evidence to impeach their correctness, I am not afraid to acknowledge, that there would be force in this reasoning. But it would be a dangerous example, if Courts Martial should give implicit credit to the marking of log-books; more particularly, when the attention is necessarily so much otherwise engaged, as it must have been at the time in question, when we had been in action with the enemy, and still continued in fight of them for further engagement.

ment. A man must be little accustomed to naval engagements, who in such critical and busy moments expects great accuracy in marking either the rates of a ship's sailing, or any other particulars; and what commander of a ship would be safe, if his life and honour were to be decided upon by such an uncertain and fallible test? Former Courts Martial have been so aware of this, that, though it is usual to call for log-books to inspect them, they are not in strictness considered as evidence; and so Admiral Byng was told at his trial. But notwithstanding log-books should for the present purpose be received as admissible evidence, the danger of being much influenced by their contents will be the same; and in the particular instance of the Victory's log, besides the *general objection*, many *special reasons* occur to dissuade relying upon it. None have pretended, that her log was hove, so that the rate of sailing is mere guess. The log describes the Victory to have laid to in the afternoon of the 27th from one o'clock till four; during which important hours, neither the rate of sailing nor course is marked. But the Master, and other officers of the Victory, at the trial of Admiral Koppel, and now, acknowledge that she did not once lye to in any part of that afternoon; and this fact is also acknowledged by Admiral Campbell. The Victory's log makes the second time of hoisting the signal, for ships to windward to bear down into the

Admiral's wake, *half an hour after four*. But, though exactness, as to the time of hoisting this signal the second time, is of great consequence to a proper understanding of the transactions of the day, yet the time is grossly mis-stated: for it has been proved by the written minutes taken on board the *Arethusa*, and the concurrent testimony of Captain Marshal, and his purser, that the real time was *thirteen minutes after six*. Again, the *Victory's* log mentions, that the signals, for the *Prince George* and *Bienfaitant* to chase the three French ships, were made at four in the morning of the 28th, and that they were called in at nine, which supposes them to have been chasing *five hours*. But it is notorious from the evidence given at the late trial, and it appears from Captain Macbride's evidence on the present one, that these two ships were called in *within half an hour* after the signal for chasing was made. These errors and falsifications, whether innocently introduced or not, are sufficient to destroy the credit of the *Victory's* log-book. But there is yet a great deal more to impeach its authority as to the rate of sailing. Though the *Victory's* log marks the rate to have been uniformly two knots from four o'clock till ten at night, yet Admiral Campbell impliedly admitted, that the rate was sometimes greater, when he said, *he did not believe that the Victory went above three or three and a half knots any part of the time*. This

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shews, that he considers her rate of sailing as *under-marked*. The log of the Foudroyant, which ship the Captain proves to have been in her station *next aftern of the Admiral* from three in the afternoon, nearly corresponds with the Formidable's log, as to rate of sailing; and therefore if the Foudroyant's is not over-marked, the Victory's must be under-marked. The Master of the Victory and others represent the weather in the afternoon of the 27th to have been *squally* and unsettled, though not blowing hard. But is it likely, that the Victory, *under so much sail* as she is described to have had set, and during the hours she was going *two points from the wind*, should not go more than *two knots* an hour? At seven the Victory hauled her wind, and kept close to it all night, and till eight carried the same sail as when going from the wind. But still her log allows two knots an hour, *as if she went as fast with much less sail by a wind, as when she was going with more sail from the wind*. All this shews, how unsafe it is to trust to the rate of sailing marked in the Victory's log-book. But I do not mean to have it understood, that the Victory's log is the only inaccurate one. Probably the rate of sailing in the Formidable's log was marked with equal incorrectness; and if we suppose her log to have been as much *over-marked* as the Victory's appears to have been *under-marked*, this, with the circumstance of the Formidable's bad steer-



ing from the want of headfail, will account for the difference between the two logs, and reconcile the Admiral's outfailing me. At the same time, I do not found any argument in my favour on so uncertain a basis, as an entry of the rate of sailing made on guess and random calculation, in the hurry after an engagement. My view is to resist any argument on *either* side from so dangerous a source, and to draw the attention of the Court to the strong evidence of the *correspondent course* of the Victory and Formidable, and *that unerring test, the fact of the Admiral's encreasing his distance, notwithstanding my steering the same course, and carrying all the sail in my power.*

The next article which I conceive to be intended as a charge against me, after the signal for the line, and that for bearing down into the Admiral's wake, the first time of hoisting, is the latter signal, the second time it was made. Mr. Keppel, in his defence on the late trial, says, that this last signal was made *a quarter before five*. His log makes the time *half an hour after four*; and Mr. More, who assisted the Admiral's secretary, spoke on the late trial *to the same time as the log*. Mr. Campbell is *still more early* in point of time, he having in effect said, that the blue flag was hoisted again *within a few minutes after being hauled down*, which makes the second time of hoisting the blue flag to have been *before four*. But all these representations are now proved to  
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*be contrary to the real truth: each being very remote from it, but Mr. Campbell's most extravagantly so. For fixing this point beyond a doubt, I am obliged to Captain Marshal, his purser, and the mate of the Arethusa, examined at the late trial; all of whom swear to the blue flag's not being hoisted the second time, till thirteen minutes after six, and found themselves on the written minutes taken at the time; Captain Marshal, when asked the question upon oath, whether the blue flag was flying between thirty minutes after three and thirteen minutes after six, adding an answer in the negative. This also is a very operative detection of the false statement of time by the Admiral and his officers. It relates to a very material signal, it being the first made for coming into the Admiral's wake, which could have the least application to me; and as it was the first signal or notice for enforcing my compliance with the signal for a line, it demonstrates, that even the Admiral himself did not expect me or my division to be in a condition to get into our station till after six. That he did not look for me or my ships sooner is also apparent, from his filling my station with the Red division, till more than half an hour after five: even Sir Robert Harland's Captain having informed the Court, that it was not till that time, that Sir Robert received the message for quitting the rear and reoccupying*

pying his proper station. Whether the position of the Vice of the Red's division, whilst in the rear, was or was not such as absolutely to exclude my division, till the former had left it, is a nicety scarce worth contending with Mr. Keppel; because its being occupied by Sir Robert Harland is not the reason I give for being to windward and astern of my station; but I only advert to the fact to corroborate, what I infer from the late hour of the first enforcing signal for calling me into the line. In respect to my conduct on seeing the signal for coming into the Admiral's wake, I obeyed it to the extent of my power. I repeated it, and I continued those efforts for ~~the~~ the length of my station, in which I had been so assiduous before, that there was no room for further excursions. The former will be proved by my officers, and is indeed allowed by the witnesses against me. What the impediments were, which prevented the latter, particularly our inability to set the foretop-sail till between seven and eight, I have already explained at large.

In less than half an hour after the second time of hoisting the blue flag or signal for bearing down into the Admiral's wake, the pendants of particular ships of my division were added to the blue flag. These pendants were repeated on board Captain Marshal's ship at *thirty-six minutes after six*; and immediately on being seen, they were repeated on  
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board the Formidable. Had the Admiral thought the ships of my division in a condition to come into their station in the line *sooner*, why did he delay hoisting their pendants *till so late an hour*? It is also observable, that *the pendant of the Formidable was not amongst those hoisted*.

Next comes the message to me from the Admiral by Captain Windfor in the Fox; and as my enemies have made the supposed disobedience of it so frequent a topic of accusation, it is necessary, that I should consider the circumstances relative to it in a very particular manner; in doing which I must be deluded by the most unaccountable misapprehension and error, if I am not able to *falsify the story about this message almost from beginning to end*. To examine all its parts with the minuteness, which is requisite to disappoint the unwarrantable inferences from it, I beg the attention of the Court to the *time of sending the message*, the *time of its being delivered*, and the *words of it*.

Admiral Keppel in his defence on the late trial, asserts, that he *sent the message at five o'clock*. Captain Windfor, who carried it, and other witnesses, have sworn *even to an earlier time*. But they are *all falsified* by the concurrent testimony of Captain Marshall, Mr. Graham his purser, Mr. Cawsey mate of the Arethusa, and the *written minutes of the purser taken when the signals were repeated*;—evidence, which Mr. Keppel himself cannot controvert with  
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any grace, after the great encomiums he has so justly passed upon the extraordinary accuracy of Captain Marshal in repeating signals. If Captain Marshal, his two officers, and the minutes in writing taken by his direction at the time, are to be depended upon, more than other witnesses *speaking from their mere recollection*, the signal for the Fox to come within hail of the Victory to receive the message was not made till *thirty-two minutes after five*, that is, *above half an hour* after it is represented by Mr. Keppel, his officers, and Captain Windfor, to *have been delivered*. If Captain Marshal, whose station was *three miles to windward of the Victory's beam* is to be credited, Captain Windfor could not have less than that distance to go before he could come within hail of the Victory to receive the message, and must have been *half an hour in going to her*; and the written minutes taken under the direction of Captain Marshal prove, that Captain Windfor did not arrive within hail of the Victory in less than half an hour; for they take notice, that the signal for the Fox was hauled down at three minutes after six. These facts together demonstrate, that the time of Admiral Keppel's sending the message was, *not at five or a little before, but a little after six*.—Mr. Keppel, *speaking on his oath*, has said, that he called the frigate, which carried the orders to Sir Robert Harland to go to his proper station in the van, and which

which was the Milford, at the same time that he called the Fox to carry the message to me. This leads to fixing *five* as the hour of sending the message by the Fox. But Admiral Keppel is most directly contradicted by Captain Marshal and his purser also speaking on oath, and their written minutes; according to which the Milford's signal was made ten minutes before four, and hauled in thirty-three minutes after four; but the Fox's signal was not made till thirty-two minutes after five, and not hauled in till *three* minutes after *six*. In other words, instead of Mr. Keppel's sending these two frigates at or about the same time, there was a difference of *an hour and a half* between dispatching them. This striking error in *antedating* the dispatch of the message by the Fox *one hour and an half*, may, as I can plainly see, be convenient to the plan of my destruction. But how it is otherwise to be accounted for, is the business of Mr. Keppel to explain. I hope, for his own sake, that he confounded the Proserpine's signal with the Milford's. The Proserpine's was hoisted twenty-two minutes after five, and hauled in two minutes after six; as appears from the same written minutes taken on board the repeating frigate. This brings the Proserpine and Fox within hail of the Victory one minute after each other. But unfortunately for Mr. Keppel, the Milford, and not the Proserpine,



was the frigate sent with the orders to Sir Robert Harland; nor can Mr. Keppel avail himself of the apology I have thus created for him, *without sacrificing the credit* of Captain Windfor, Captain Berkeley, Lieutenant Bertie, and those officers of the Victory, particularly Admiral Campbell and Mr. Rogers, who have as positively fixed sending the Fox at a so much earlier time in the afternoon; nor without acknowledging the truth and accuracy of the officers of the Formidable.

The time of *delivering* the message sent by the Fox, is falsified in the same extraordinary way, as the time of *sending* it. Captain Windfor, who carried the message, swore at the late trial, that he came within hail of the Formidable, and delivered the message to me *nearly about half an hour after five*; and being questioned at the present one to the same point, he repeated the same words. But the Court is in possession of that, which abundantly proves, that Captain Windfor is still grossly erroneous in speaking of time. It is already shewn, that he did not *receive* the message *till after six*; and he allows he was half an hour in getting to the Formidable, which, without more, renders his delivery of the message to me at *about half an hour after five* impossible. But other circumstances concur to disprove the evidence of Captain Windfor in a still greater extent. He allows himself only *half an hour* to carry the message. But the

the Formidable is proved to have been three points on the Victory's weather-quarter, and *three miles distant*; and Captain Windsor acknowledges, that to fetch the Formidable, he made a *circuit, going to leeward of all the ships of the center division, which were formed astern of the Victory, and was forced to change his tack*. All this so increased the space he had to traverse, that, though he went *six or seven* knots as he calculates, it must have required considerably *more than an hour* before he could reach me. This postpones the time of delivering the message till *between seven and eight* in the evening; and corresponds with the account of my officers; who are all positive, that the Fox did not come within hail of the Formidable till near or about *sun-set*, which, on the 27th of July, and in the latitude of Ushant, where we then were, is *a little after half past seven*. Other corroborating proofs that this was the time I received the message, are, that we had repeated the blue flag the second time of its being hoisted, which was at *thirteen minutes after six*; and that we had also repeated the pendants of particular ships of my division, which, by Captain Marshal and the written minutes taken on board his ship, were not hoisted *till thirty-six minutes after six*, a considerable time before the Fox hailed us. It is further ascertained by the circumstance of our not being able to bend our foretop-sail till a little before *eight*; in doing which, both Cap-  
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tain Windsor and Lieutenant Bertie observed us to be employed, whilst the Fox was near the Formidable. Thus from the evidence of Captain Marshal, whose most justly distinguished accuracy as a repeater of signals the Court has heard such warm encomiums upon; from the written minutes taken on board his ship at the time; and from a combination of circumstances, not gleaned without great labour and difficulty out of the great mass of evidence on the late and present trial; the result is, that a message sworn to have been delivered to me at *half past five*, was not really delivered till *half past seven*. How material the error of two hours in stating this message is, will strike every one, who hears me, when it is recollected, what an influence time has on the supposed import of the message. If the message was delivered at *half an hour after five*, it might not have been too late to re-engage, had such been the Admiral's intention, and other circumstances independent of time did not obstruct him. But at a *quarter of an hour after seven* in the evening, that is, *a quarter of an hour before the message reached me*, it is confessed by Mr. Campbell to have been so late, that the Admiral had then given up all thoughts of re-engaging.

There is almost as great a disagreement about the words of the message, as about the times of its being sent and received. According to Captain Windsor, Lieutenant Bertie, and the officers of the Victory,

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the message delivered to me imported, not only, that the Admiral *wanted the ships of my division* to come down into his wake; but further, that it extended to *me* as well as the ships of my division, and that he *waited for me to renew the action*. The *first part* of the message I acknowledge receiving. But I deny, that the message, repeated to me, mentioned either *me*, or the *waiting for me to re-engage*; and the few on board my ship, who were present when it was delivered, agree with me in their account of it; for they say, that it was simply confined to the Admiral's wanting the ships of my division.

On this contrariety of evidence about the words and import of the message, it is the office of the Court to decide, who are best intitled to belief, and which of the two representations carries with it most appearance of probability.

But it may not be improper to submit to the Court some few considerations, against yielding to the seeming weight of evidence, for the terms of the message, as it is stated against me.

The witnesses, who have spoken so positively to mentioning, that the Admiral waited for me to re-engage, *stand convicted of the grossest errors* in their relation both of the times of receiving the message, and of the time of delivering it; in the former more than *one hour*, in the latter, more than *two hours*. They own too, that they speak the words *entirely*  
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*from memory*, never having committed them to writing. But, how can the Court safely trust to the *frail* memory of persons thus exceedingly erroneous, as to the *time* of the message, for the *words* of it, in preference to those, against whose testimony no such objection lies?

The Admiral *was not waiting for me*; nor had he been waiting any part of the afternoon; but, as Admiral Campbell acknowledges, the Victory had been the whole afternoon under the same sail, which was more than the Formidable could carry, till her foretop-sail was bent, which was not till about eight o'clock. How improbable is it, that Admiral Keppel should send me a message to tell me, that he was waiting for me, when he was not waiting! As it has been asserted, that he had been waiting for me and my division the whole afternoon to re-engage, and so early as half an hour after four was become *wearied* with fruitless expectations, what was the reason, that no enforcing signal was made either for me or my division, till thirteen minutes after six? Why were the signals for particular ships of my division postponed till thirty-six minutes after six? As I judged, it would have been unreasonable to expect, that my division, which had suffered so particularly in the action, and were latest out of it, should be fit to take their stations in the line sooner; and from his conduct in not making their particular signals  
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till more than half an hour after six, it seems as if the Admiral was of the same opinion. If the Admiral was dissatisfied with not seeing these last signals immediately complied with, why did he not express his disappointment by going a step further, and making signals for them to make more fail? In respect to my ship, the *particular signal for it was never made*. But if my being out of the line was so unaccountable to him at half an hour after four, why did he omit to make my particular signal *two hours after*, when he called in the ships of my division? If he was so impatient to re-engage, and I was the obstacle, would not making my particular signal have been a more expeditious way of informing me, than sending a message which took up more than an hour in carrying? If he meant to be delicate, as he professes, would not the *silent and disguised* censure of a strong signal have been equally expressive, yet more delicate than the *harsh and coarse* language of a *trimming* message? If the object of the message to me was to renew the engagement, why was he so long before he sent it, that it could not reach me, till considerably after the latest time in the evening fixed by himself and his friends for another action?

Other circumstances, which operate against the idea of an intention to re-engage in the afternoon of the 27th, and consequently against a message to that effect, might be enlarged upon; such as suffering the

Van division to occupy my post next the enemy till after five;—the late hour of the Red division's resuming their proper station in the Van;—the improbability of meaning to renew the engagement with my disabled, unfitted, and still dispersed division, instead of Sir Robert Harland's fresh and collected ships; and the incomplete forming of the Centre division even after six. But it would be almost endless to pursue these topics; and therefore I hasten to a more decisive indication of the designed import of the message, I mean, Admiral Keppel's own comment.

In Admiral Keppel's public letter about the engagement, he declares, that he allowed the French to re-form their line in the afternoon of the 27th, with an expectation that they would try their force with us the *next morning*. Is not this language an avowal by Mr. Keppel, that the next morning was the time he had in view for re-engaging? The log-book of the Victory is of the same tendency; for it takes notice of *preparing to renew the engagement at day-light the next morning*; but is without one syllable about renewing the action the preceding afternoon. When it was first inserted in the public prints, that the message to me was to signify, that the Admiral waited for me and my division to renew the action, I appealed to Mr. Keppel to protect me against so cruel a misrepresentation; asking him, whether it  
was



was possible, that he ever should send me such a message; and though he declined doing me the full justice I expected, yet he would not say, that he had sent such a message, but replied in these *remarkable terms, I am told that such words were used*. But if he had been convinced, that such was the message, would he have hesitated avowing it, would he have referred to the report of other persons? His language *upon oath* is of the same undecided, ambiguous kind. *He will not say, that he sent that message. He cannot trust to his own remembrance of it. He cannot exactly recollect the words.* He leaves the labour and hazard of recollection to his own officers; particularly to Admiral Campbell, whose ill offices I have experienced in a great variety of instances. But whatever the terms of the message were, whether it was for my division to come into their stations, or whether it was that the Admiral waited for me and my division to renew the engagement, I trust, that I shall be found to have done all that could be expected at the very late hour I received it. Whatever might be the Admiral's intention, when he sent the message to me, it did not come to me till after that time was passed, at which Rear-Admiral Campbell confesses, that the Admiral had relinquished every idea of a further engagement till the next day. Convinced that a night engagement was not the object of the Admiral, it only remained for me to continue my

efforts for completing the repairs of the rigging, more especially in setting my foretopfail ; in which I was so successful, as to get into my station in the line, and to be quite ready for action again before day-light in the morning.

As to sending a *message* to inform the Admiral of my inability to get the length of my station, making a *signal of distress*, or *shifting my flag*, they did not strike me at the time as either necessary or applicable to the circumstances under which I acted ; nor do I yet know of any reason, which, on a review of my situation the evening of the day of the engagement, should induce to such an opinion. But I have already expended so much time in my observations on the subject of the message, that I find myself forced to postpone the particular reasons, which may evince the propriety of my not adopting either of those measures, till the close of the examination of my witnesses, when I hope to be indulged by the Court with a hearing of such further remarks, as shall then appear necessary for my final justification.

After the message, I know of only two other articles hinted at against me, which require the least notice ; and in respect to them very few words will be necessary.

One is, that I did not carry my distinguishing lights the evening of the 27th.—But my witnesses, particularly, some whose business it was to attend the  
lights,

lights, will prove the fact of my carrying all of them. When this matter was first questioned, I really thought it probable, that the toplight was not kept burning; because I recollect being told of some difficulty about it from a wound the lanthorn had received in the action, and that I observed it was of no great consequence. But I gave no orders to countermand any of the lights; and always took for granted, that my stern light was kept burning the whole night.

The remaining article relates to the situation of my ship at day-break the morning of the 28th.—Sir Charles Douglas, from an observation he made at the dawn of day, conceives, that he then saw my ship greatly ahead of my station in the line. But though I have not the least doubt, that he says what he believes to be the truth, yet I am persuaded, he must have mistaken some other ship for mine. In the course of the trial, I shall examine some witnesses to prove, that I really was *astern of the Admiral* at the time, when it is supposed that I had got *ahead of him*.

I now draw near to a conclusion for the present, having only to remind the Court, in what light Admiral Keppel viewed my behaviour on the two days, to which the Court's enquiries are limited, before the commencement of those differences, from which the present trial originates.

The day but one after the action I visited the Admiral on board the Victory. He received me with his usual marks of regard, friendship, and confidence, without the most distant hint of being dissatisfied with the least part of my conduct. On the contrary he communicated to me the draught of a letter he intended to send to the Admiralty, either the same or one very little different from that afterwards published in the Gazette. He discoursed with me on several parts of the letter; and when he came to the part, in which he praises Sir Robert Harland and me by name for *our spirited behaviour*, he said, that he thought it best to mention it in a general way without particularizing; and this came from him in such a manner, that I thought he alluded to my ship's having been so much more engaged, and having suffered so much more, than Sir Robert Harland's. Is it possible, that Admiral Keppel should be capable of *so much duplicity*, as to have thus commended me in a public letter in the same ample manner as Sir Robert Harland, and to have thus communicated with me on the subject of it, if he had then entertained the least ill opinion of any part of my conduct? In this Court, Mr. Keppel, being on his oath, endeavoured to *qualify* his commendation of me by narrowing it to my behaviour in *time of action*, and *spoke as if his letter was so expressed*. But the letter itself contains no such qualification; and I did not

not wonder to see him *under embarrassment*, when he *so disingenuously endeavoured to controul the effect of his open praise, by having recourse to secret and mental reservation*. Soon after we arrived at Plymouth, Mr. Keppel received a letter from the Secretary of the Admiralty, which contained his Majesty's approbation of my conduct repeated in Mr. Keppel's own words, and expressed to be founded upon his representation. This letter was also shewn to me by Admiral Keppel. Before we left Plymouth for the second cruise, he wrote a second letter to the Admiralty, in which he once more includes me in the praise and commendation of the officers under him.

After such *unqualified and deliberate* acts of approbation of my conduct on the 27th of last July from Mr. Keppel, as I have here enumerated, it will be difficult for him to account for his *present censures* of my conduct on the *same* day, without either fixing on himself a *charge of the greatest duplicity*, or of suffering his evidence on oath to be influenced by the spirit of *anger and revenge*.

Here, Gentlemen, I close my defence for the present, surrendering both my life and honour into the hands of the Court, with a full assurance, that I shall meet with the same protection from you, as each would expect from his brother officers in a like situation; and that you will not allow truth and

innocence to be made a sacrifice to the *clamour* and *noise* of party, or to the *prejudiced* testimony of persons *avowedly* acting from the dictates of *private malice*.

Gentlemen, I will detain you with only one sentence more.—My mind sees no *medium* between *life with entire honour*, and *death without*; and I ardently wish, that your judgment, be it what it will, may be directed by the *same alternative*,

SIR

SIR HUGH PALLISER'S  
ADDRESS to the COURT,  
ON THE CLOSE OF  
THE EVIDENCE.

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MR. PRESIDENT,  
and  
GENTLEMEN of the COURT,

THE examination of my witnesses being now concluded, I intreat, that the Court will permit me to add, to the Defence I have already offered, some considerations, which either have not yet been submitted to your attention, or have not been enforced so fully as their importance may require. I feel, how much I have already exercised the patience of the Court; and therefore I am extremely averse to intruding any further matter upon them. But I have so much at stake on the issue of this trial, and the activity of my enemies has been so conspicuously exerted



exerted to fix blame upon me, even where I deemed my innocence most invulnerable; that should I, from a dangerous excess of confidence, pass over any points, however immaterial they may sometimes have appeared to me, which my enemies have essayed to strain into importance, my silence might be misunderstood, and a conviction of the obviousness of the subject might be suspected to proceed from a dread of investigation.

Many questions have been asked about the practicability of my shifting my flag; and it is to the honour of the Court, that they have been so assiduous in examining to a point, on which my enemies have so often laboured to ground a censure of me. In my last address to the Court, I only spoke generally to this head. But I will now open my mind upon it with particularity.

The imputation for not shifting my flag refers to the twenty-fifth article of the fighting instructions, the words of which are, that "if any flag ship be disabled, the flag *may* go on board any ship of his own Squadron or division."

By this instruction it is clearly *optional* in the flag officer to shift his flag or not, according to circumstances; and in my situation the afternoon and evening of the day of action, so foreign and inapplicable did the instruction appear to me, that, I own, nothing could be more distant from my thoughts at the time, than the idea of shifting my flag; for which I sub-

mit to the Court's better judgment the following reasons.

The *battle was over* and the signal for battle hauled down; the immediate renewal of the action by the Admiral, when I had wore close to the enemy, having been declined, for prudential reasons, the propriety of which I have no right here to call in question.—We were *not pursuing an enemy, nor steering towards one*. But the Admiral, as he describes his own motion in respect to the French, had *wore and laid his stern to them*. On first describing this manœuvre, which the Admiral stated to have been *for collecting the ships*, he styled it *an appearance to run away*. But recollecting himself, he afterwards, on the Judge Advocate's reading these latter words, well observed, that it was better to omit them in the minutes; and his wishes were complied with.—The *enemy was not coming to attack us*, but was forming to leeward of our fleet.—I knew, that my ship would be refitted and ready for action *by day-light next morning*; and every motion of the Admiral indicated to me, that he did not intend to re-attack before the morning. My reasons for this opinion were many, and are already before the Court. In substance they are, the Red division's leaving the rear between five and six; the uncollected and unrefitted state of my division at that time and during the rest of the afternoon till night; the incomplete forming of the center division; the distance

distance of the French fleet from us ; the late hour of the Red division's getting into their station ahead ; and the Admiral's never shortening sail, till eight o'clock in the evening, to give the Formidable and Vengeance, and other crippled ships, the opportunity of collecting and gaining the length of their stations in the line. These circumstances, it should also be recollected, receive the strongest confirmation from the *Admiral's public letter* and the *Victory's log-book*.— Besides, to the shifting of my flag many things would have been essential. I must have shortened sail, and laid to, which would have thrown me at a much greater distance from my station. We must have new-reefed all the tackle-falls, and repaired all the gear necessary for hoisting out boats ; which would have retarded the work going on for setting more sail. The ship, to which I should have shifted my flag, must also have laid to, and this would have kept her more astern and out of her station. The moving from one ship to the other, with my signal-colours, necessaries, and attendants, is an operation, which would have required, as I conceive, some considerable time.

All this being considered, shifting my flag might have produced great inconveniencies, by increasing the Formidable's distance from her station, and also keeping another ship out of it. But I know of no good purpose, which could have been answered. Nor do I conceive, that our naval history will furnish

an instance of a flag officer's shifting his flag under such circumstances.

As to the signal for the line's being out, it is far from necessarily proving an intention of immediate renewal of the action. The inference in this respect from a line depends on circumstances. If the Admiral had been standing with his fleet towards the enemy, I agree, that the indication would have been strong indeed; and, as in that case I certainly should have concluded, that his object was to hasten on an engagement before night; so, without doubt, I should have been forward to insure my having a proper share of the glory of a second action, either by endeavouring to bear down to engage the first ship of the enemy I could have fetched, or by shifting my flag; of which measures I should have preferred the one, which would have been likely to bring me into action soonest and most effectually. This assertion, I expect, the more credit in; because it is in proof, that, early in the afternoon of the day of action, though my ship came last out of the engagement, and was the most damaged, yet I wore so instantly, and so closely to the enemy, that my ship was nearer to the French fleet to renew the fight, than the Victory or any other ship of our fleet. But the Admiral was not standing towards the enemy. He had put his stern to them; and there were all the other indications

indications I have already described to shew, that the line was forming, not for an immediate renewal of the fight, but to collect all the ships for action early the next morning. And here I beg leave to take notice of a circumstance, which corroborates my idea of the Admiral's intention. At the late trial I proposed it as a question to a witness; whether, from the motions of the Admiral, and his public letter, the witness did not infer, that there was no intention to re-engage till next day. The Admiral strenuously resisted the putting such a question; and the Court over-ruled it. This circumstance will be found in page 33 of the trial printed by authority. But I do ask, whether any thing could more evince the Admiral's consciousness of the sense conveyed by his own words, than such a dread to hear the construction of them?

In the course of the trial, it has been asked, whether I made any signal of distress. The twenty-second article of the fighting instructions explains what this signal is; and then the twenty-third article points out, how other ships are to act, when such a signal is made by flag ships, and it is thus expressed.

“ If the Admiral or any flag ship should be in distress  
 “ and make the usual signal, the ships of the fleet  
 “ are to endeavour to get as close up into a line  
 “ *between him and the enemy* as they can, having  
 “ always an eye to defend him, if the enemy should  
 “ come

" come to annoy him in that condition." But taking these two articles together, I submit to the Court, that they are only applicable to flag and other ships, which meet with some material disaster, during battle, and when hard pressed by the enemy; as is plain from the terms, which suppose, either an enemy to be actually attacking, or to be at least advancing for the purpose. The situation of the *Formidable* was not of this kind; for, though she was so much astern, and to windward of her station, she was far from being within the meaning of the signal, the enemy not making the least attempt to annoy her after she had joined the *Victory*, but on the contrary being more to leeward of the *Formidable* than the body of our own fleet.

In respect to sending a frigate to the Admiral, to inform him of our not being able to keep up with him, I had no frigate to send till about eight o'clock, as must appear to the Court from the evidence of Sir William Burnaby; which shews, that early in the afternoon the *Milford*, being the frigate belonging to my division, was called to the *Victory* by signal, and was employed by the Admiral. But if she had not been so employed, I know not for what purpose I should have sent her to the Admiral; for I concluded, that the condition of the *Formidable* was so apparent as to make a message unnecessary; especially

espécially as he *omitted to throw out my ship's pendant* with the pendants of the ships of my division.

I shall now take a short notice of some few other things, as they severally occur to me.

I had brought to the remembrance of the Court many striking acts of approbation of my conduct by the Admiral, for the sake of contrasting them with the criminating tendency of his evidence to this Court. There wanted nothing more to expose such inconsistency ; nor did I look for more. But chance has thrown other matter in my way. Sir William Burnaby's account of the Admiral's sending his compliments to me, and of the conversation about me *the day after the engagement*, is a new proof, how well satisfied he was with my conduct at that time. If he had thought me disobedient, would he have been so eager in sending his compliments to me, or so ready to exclaim with a sort of feeling for me, that I had received more damage than any of the fleet ?

It gave me singular satisfaction to see, how clearly the proofs of my having my distinguishing lights burning in the night after the action came out at last. The two men, who had the care of the lights, swore with so much particularity and so convincingly, that all doubts apparently vanished in the minds of those, who heard their evidence. My obligation to the honest simplicity of these men is very great ; because  
by



by confirming the less positive testimony of other witnesses, it takes from my enemies a topic of abuse, which was so long slighted by me, and so industriously circulated to mislead the public opinion concerning me, that it had at length grown into a serious accusation.

I am also glad, that it has been in my power to produce positive testimony of the repetition of the signals; particularly the signal for the line, whilst I was within my station. Very impartial persons have, I believe, entertained a doubt on this head. But I flatter myself, that it is entirely removed. I was myself quite certain that the signals were repeated; because I was particularly observant of signals the whole day; and if I thought, that the fact was still doubted, I should be induced to call a witness, who could speak very positively to the point of signals, but stands in such a relation to me, and has been so constantly attendant on me in Court, that I am not willing to call him, unless there is an absolute necessity.

The dangerous state of the foremast of the Formidable, which was the great impediment to our carrying sufficient sail to keep up with the Admiral, is a point of great importance to the clearing my character from the imputation of not using my utmost endeavours to preserve my station. I was therefore very anxious to give the Court the fullest expla-

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nation on this head; and though the Carpenter spoke confusedly, in respect to the time when he first knew of the rottenness of the mast, yet my Captain and the Lieutenant, who attended on the fore-castle, have given such ample testimony of our having known of the rottenness of the mast at the time, that I trust the fact cannot be doubted by any unprejudiced person. I well remember being informed of the condition of the mast, and the anxiety I was under from the consequential delay in bending our foretop-sail.

On the trial of Admiral Keppel, much animadversion was made on log-books. But in the course of the present, it has appeared, how very little dependence is to be had upon entries in them, of transactions in the time of actual engagement, or during the busy moments of preparing for further action. If I was disposed to retaliate on those, who have heretofore made such ill-natured remarks on the log-books of particular ships, the logs of Admiral Keppel's and Sir Robert Harland's ships, and the examinations of their several masters, furnish ample scope for the severity of animadversion. But it is not requisite for my defence to say more, than that I trust the Court will not allow my innocence to be affected by such uncertain and contradictory records.

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In the course of Admiral Keppel's evidence, he took care to disclaim being an accuser, and to thank God, that he was not so. But did the tenor of his evidence correspond with this declaration? Was not his evidence criminating in almost every part? Have not he and his friends all joined in the accusation of me? *Have they not sealed their accusation with their testimony upon oath?* Shall the *open* accusation of others, however growing out of *self defence*, never be forgiven; and a *secret* accusation, *vainly attempted to be sustained by the accuser's oath*, escape all censure?—It is not fit, that I should pursue the comparison further.—Let the hearts of those, who hear me, feel the rest.

It is now time to leave the Court to their own judgement of the case before them. If I have omitted any thing material, their wisdom and humanity will supply it. If I am mistaken in any of my facts, or in my reasoning upon them, their candor will correct the error, without hastily imputing to me an intentional misrepresentation.

Mr. President, and Gentlemen of the Court,

To conclude, I flatter myself, that, as, *at first*, Admiral Keppel's commendation of me, procured me the approbation of my Sovereign; so your honourable acquittal of me, *now*, will dissipate the cloud of prejudice, and restore me to the good opinion of my country.

A T: Court-Martial assembled on board of the  
HMS "Hector" ship the Swedish in Portland harbor  
the 15th of April 1759, pursuant to the order of the  
Lord Commissioners of the Admiralty, bearing date  
the 10th of April 1759, and directed as therein  
contained. Vice-Admiral Sir John Mordaunt, then  
in the command of the fleet, was appointed as  
President and Judge, and with him were  
every day sitting the Judges, except on the 16th  
when following the vote of Vice-Admiral Sir  
John Mordaunt, Bart.

P R E S E N T.

Vice-Admiral Sir John Mordaunt, Bart.  
President and Judge.  
Vice-Admiral Sir John Mordaunt, Bart.  
Judge.  
Vice-Admiral Sir John Mordaunt, Bart.  
Judge.  
Vice-Admiral Sir John Mordaunt, Bart.  
Judge.  
Vice-Admiral Sir John Mordaunt, Bart.  
Judge.  
Vice-Admiral Sir John Mordaunt, Bart.  
Judge.

**A**T a Court-Martial assembled on board his Majesty's ship the Sandwich in Portsmouth harbour the 12th of April 1779, pursuant to an order from the Lords Commissioners of the Admiralty, dated the 3d day of April 1779, and directed to George Darby, Esq; Vice-Admiral of the Blue, and second officer in the command of his Majesty's ships and vessels at Portsmouth and Spithead, and held by adjournment every day afterwards (Sundays excepted) till the 5th May following, for the trial of Vice-Admiral Sir Hugh Palliser, Bart. *viz.*

P R E S E N T,

GEORGE DARBY, Esq; Vice-Admiral of the Blue,  
President.

ROBERT DIGBY, Esq; Rear-Admiral of the Blue.

Captains Sir CHALONER OGLE,  
RICHARD KEMPENFELDT,  
JOSEPH PEYTON,  
WILLIAM BAYNE,  
MARK ROBINSON,  
ADAM DUNCAN,

SAMUEL

SAMUEL GRANSTON GOODALL,  
 JAMES CRANSTON—till the close of  
 the third day, from which time  
 he was unable to attend on ac-  
 count of sickness.

ROBERT LINZEE,  
 JOHN COLPOYS,  
 GEORGE ROBINSON WALTERS.

The order aforementioned having been accompanied with the original Minutes of the Proceedings of the Court-Martial lately held for the Trial of the Honourable Augustus Keppel; and reciting that it appears by the said Minutes that several matters were given in evidence at the said trial respecting the conduct and behaviour of Vice-Admiral Sir Hugh Palliser on the 27th and 28th of July last, which demand strict examination: The Court proceeded to examine witnesses touching the said several matters, and to try him for the same; and having maturely considered the whole—also what the prisoner has alleged in his defence, together with what has been given in upon evidence in support thereof—are of opinion that his conduct and behaviour on those days were in many respects *highly exemplary and meritorious*: at the same time cannot help thinking it was incumbent on him to have made known to his Commander in Chief the disabled state of the Formidable, which

which he might have done by the Fox at the time she joined him, or by other means.—Notwithstanding his *omission in that particular*, the Court are of opinion *he is not in any other respect chargeable with misconduct or misbehaviour* on the days aforementioned, and therefore they acquit him, and he is hereby acquitted accordingly.

	G. DARBY,
	ROBT. DIGBY,
	C. OGLE,
	RICH. KEMPENFELDT,
	JOS. PEYTON,
GEO. JACKSON,	WM. BAYNE,
Judge Advocate.	M. ROBINSON,
	ADAM DUNCAN,
	S. GOODALL,
	ROBT. LINZEE,
	JN. COLPOYS,
	G. R. WALTERS.

F I N I S.